

BRB No. 92-2662

RICHARD DOBIHAL)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
MARYLAND SHIPBUILDING AND)	
DRY DOCK COMPANY)	DATE ISSUED:
)	
Self-Insured)	
Employer-Respondent)	DECISION AND ORDER

Appeal of the Supplemental Order-Attorney Fees of Bruno DiSimone, District Director,
United States Department of Labor.

Clifford W. Cuniff, Annapolis, Maryland, for claimant.

Donna L. Jacobs and Gloria S. Wilson (Semmes, Bowen & Semmes), Baltimore, Maryland,
for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH and DOLDER,
Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Supplemental Order (04-0028993) of District Director Bruno DiSimone awarding an attorney's fee on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). The amount of an attorney's fee award is discretionary and may be set aside only if the challenging party shows it to be arbitrary, capricious, an abuse of discretion, or not in accordance with law. *See, e.g., Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant sought benefits for a work-related hearing loss. Employer controverted the claim, and the case was transferred to the Office of Administrative Law Judges for a hearing. The administrative law judge found that employer is liable for claimant's benefits as the responsible employer and he awarded claimant benefits for a stipulated 6.6 percent binaural impairment. Thereafter, the administrative law judge awarded claimant's counsel a fee in the amount of \$4,073.13, representing 28.50 hours of legal services at the rate of \$135 per hour, and \$225.63 for costs.

Claimant's counsel also filed a fee petition for work performed before the district director,

requesting a fee in the amount of \$1,485 representing 11 hours of legal services at the hourly rate of \$135. Employer submitted objections to counsel's fee request. After considering employer's objections, the district director awarded claimant's counsel a fee in the amount of \$931.50 representing 6.9 hours of legal services at the hourly rate of \$135.

On appeal, claimant contends that the district director erred by arbitrarily reducing the number of hours requested without adequate explanation. Employer responds, urging affirmance of the district director's Supplemental Order as it is in accordance with law.

We agree that the district director's fee award does not comport with law, as a sufficient explanation for reductions in fee requests must be provided. *See Devine v. Atlantic Container Lines, G.I.E.*, 23 BRBS 279 (1990); *Bell v. Volpe/Head Construction Co.*, 11 BRBS 377 (1979). Where a district director has not set forth a sufficient explanation for the reduction, the Board is prevented from reviewing the award and will remand the case to the district director for an explanation. *Devine*, 23 BRBS at 288; *Speedy v. General Dynamics Corp.*, 15 BRBS 448 (1983).

In the instant case, the district director stated that employer had proposed reasonable objections to the amount of time claimed, but failed to specifically discuss the application of the regulatory criteria of 20 C.F.R. §702.132 to the fee reduction. Moreover, the district director neglected to state which specific hours were being disallowed. Therefore, the award must be vacated and the case remanded for reconsideration pursuant to the regulatory criteria. *Roach v. New York Protective Covering Co.*, 16 BRBS 114 (1984). On remand, the district director must specify any reductions and provide an explanation therefor. *Devine*, 23 BRBS at 288.

Accordingly, the district director's Supplemental Order-Awarding an Attorney's Fee is vacated and the case is remanded for reconsideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge